

HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI
AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

Writ Petition No.7553 of 2006

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Between:

The A.P. Cooperative Housing Society Federation
Limited, Hyderabad ... Petitioner

And

The A.P. State Consumer Disputes Redressal
Commission, Hyderabad and others.

... Respondents

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:: ORDER::

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Counsel for the Petitioner: Sri T. Srikanth Reddy

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April 18, 2006

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Per G.S. Singhvi, CJ

In this petition, the petitioner has prayed for quashing orders dated 2-3-2002 and 14-7-2005 passed by District Forum, East Godavari at Kakinada (for short ‘the District Forum’) in Consumer Dispute No.229 of 1999 and the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short ‘the Commission’) in F.A.No.479 of 2002 respectively.

The Facts:

Respondent No.3 – Mohd. Ismail applied to the petitioner – A.P. Cooperative Housing Society Federation Limited for grant of House Building Loan of Rs.45,000/-. The same was duly sanctioned. Thereafter, on a proposal sent by Vidyanagar Cooperative Building Society Limited (respondent No.2) of which respondent No.3 was a member, resolution dated 24-5-1983 was passed by the Board of Directors of the petitioner for release of Rs.31,500/- in favour of respondent No.3 towards first and second instalments of the loan. In terms of that resolution, respondent No.3 became entitled to payment of Rs.27,700/- after deducting Rs.3,800/- towards the share capital, but he was paid only a sum of Rs.25,700/-. The third instalment was released on 19-1-1986 i.e., after a gap of three years. In the meanwhile, respondent No.2 issued notice dated 8-12-1984 under Section 63 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short ‘the 1964 Act’) requiring respondent No.3 to repay the instalment of loan with

penal interest. In his reply dated 21-12-1984, the petitioner demanded release of third instalment of Rs.19,300/-. After some correspondence, the petitioner sent notice dated

17-2-1988 to respondent No.3 for repayment of the loan. This was followed by series of correspondence between the parties. During this period, two more notices were issued to respondent No.3, who repaid Rs.9750/- on 24-2-1992, Rs.58,000/- on 20-12-1996 and Rs.25,000/- on 1-12-1997.

In 1999, respondent No.3 filed complaint under Section 12 of the Consumer Protection Act, 1986 (for short 'the Act') for issue of a direction to the opposite parties i.e., the petitioner and respondent No.2 to pay Rs.92,223.92 ps. which, according to him, were collected in excess of the amount payable by him. He also prayed for award of interest @ 2% p.m. with effect from 1-1-1999, compensation of Rs.1,00,000/-, expenditure of Rs.5,000/-, advocate's fee amounting to Rs.10,000/- and costs of Rs.2,000/-. The complaint filed by respondent No.3 was registered as Consumer Dispute No.229 of 1999.

In his complaint, respondent No.3 alleged that the opposite parties had deliberately delayed release of the instalments of loan and the amount paid to him in lieu of first and second instalments was short by about Rs.6,000/-. He further pleaded that the demand raised by opposite party No.2 (respondent No.2 herein) in the year 1984 was totally uncalled for because by then third instalment of the loan had not been released. Still further, he pleaded that he was entitled to be compensated because due to delayed release of instalments, the cost of construction had gone up and he had to pay more. He also questioned the levy of penal interest by contending that the same was wholly arbitrary and unwarranted.

In the counters filed by the opposite parties, the jurisdiction of the District Forum to entertain the complaint was questioned on the premise that subject matter of the complaint could be decided only by way of reference under Section 61 of the 1964 Act. Reliance in support of this objection was placed on the judgment of this Court in Writ Petition No.3807 of 1999. It was also pleaded that there was no deliberate delay in the release of instalments of loan and the complainant was duty bound to repay the amount of loan as per the schedule prescribed by the competent authority.

On a consideration of the material placed before it, the District Forum, vide its order dated 2-3-2002, allowed the complaint and directed the opposite parties to pay

Rs.92,223.92 ps. to the complainant (respondent No.3 herein) with interest @ 9% per annum. The reasons assigned by the District Forum for directing payment to respondent No.3 read as under:

“... As per the proposal of the 2nd respondent, an amount of Rs.31,500/- has to be released towards first and 2nd instalments out of which Rs.3,800/- has to be deducted towards the share capital which comes to Rs.27,700/- has to be paid, but they sanctioned only Rs.25,700/-. It is also evidenced under Ex.A.5 that the Board of Directors of the first respondent passed a resolution for release of 3rd instalment which was released on 19-1-96 i.e., after 3 years. The time taken from the date of application to final instalment is above three years. During the 3 years delay in disbursing the loan, the petitioner incurred heavy loss as the prices of construction material was increased. As per Ex.A.1, the Managing Committee charged penal interest at the rate of 1% p.a. on all overdues in addition to the normal lending rate of interest. After going through the material available on record, the attitude of the respondents shows that they violated from agreement i.e., Ex.A.1 (proceedings) and collected excess amount from the petitioner. It is also observed that several notices were given to the respondents about wrong calculation of penal interest, but in vain. The attitude on the part of the respondent amounts to unfair trade practice. The first and second instalments of Rs.25,700/- were released on 28-7-1983 and the third instalment was released after 3 years 6 months. It clearly shows that there is gross negligence on the part of the respondents. Both the counsels cited decisions of Honourable Supreme Court and Honourable State Commission. The learned counsel for the 2nd respondent relied on a decision reported in 1997 (2) CPJ page 55 wherein the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai held “we are of the view that the society in question being registered one and the complainant being a member thereof, the dispute should have been referred to the Registrar of Co-operative Society.” The facts and circumstances of this case are not applicable to the above decision and the learned counsel for the complainant relied on decision of Honourable Supreme Court of India reported in AIR 1994 (SC) page 787 wherein their Lordships observed: “the legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies and the house construction or building activity carried on a private or statutory body was service within the meaning of Clause (O) of Consumer Protection Act as it stood prior to inclusion of the expression housing construction in the definition of “service” by Ordinance No.24 of 1993. And the facts and circumstances of this decision is applicable to the present case and in this present case attracts clearly gross negligence and deficiency of service on the part of the respondents.”

The petitioner and respondent No.2 challenged the aforementioned order of the District Forum by filing separate appeals under Section 15 of the Act, which were

registered as F.A.Nos.385 and 479 of 2002. The State Commission relied on the judgment of the Supreme Court in **Secy., Thirumurugan Coop. Agricultural Credit Society v. M. Lalitha** and held that the District Forum had the jurisdiction to entertain the complaint. On merits, the State Commission independently analysed the facts of the case and evidence brought on record and held that there was deficiency in service on behalf of the appellant. The State Commission further held that there was no justification for charging penal interest from respondent No.3. Accordingly, the appeals filed by the petitioner and respondent No.2 were dismissed.

Sri T. Srikanth Reddy, advocate for the petitioner made efforts to persuade us to upset the concurrent finding of fact recorded by the District Forum and the State Commission on the issue of deficiency in service, but we have not felt persuaded to agree with him. A reading of the orders under challenge shows that both the District Forum and the State Commission analysed the evidence produced by the parties and recorded the concurrent finding that the petitioner had failed to disburse the loan as per the schedule agreed between the parties and, on that account, respondent No.3 had to incur extra expenditure for construction of the house. In our view, the finding recorded on this issue is a pure finding of fact based on a proper evaluation of evidence and we see no reason to interfere with the same.

In the course of hearing, we enquired from Sri T. Srikanth Reddy as to why the disbursement of third instalment of loan was delayed by more than two years, but he could not give any satisfactory explanation. This is an additional reason for our disinclination to tamper with the finding recorded by the District Forum, which, as mentioned above, was confirmed by the State Commission.

No other point has been argued.

For the reasons mentioned above, the writ petition is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

April 18, 2006

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